

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>1/12/2022</u>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RONALD G. TAYLOR,	:	
	:	
Plaintiff,	:	
-against-	:	20-CV-10170 (VEC)
	:	
	:	<u>ORDER</u>
STARBUCKS CORPORATION,	:	
Defendant.	:	
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VALERIE CAPRONI, United States District Judge:

WHEREAS Plaintiff Ronald Taylor, proceeding *pro se*, filed a complaint against Starbucks Corporation in the Supreme Court for the State of New York, *see* Compl., Dkt. 4 at Ex. A;

WHEREAS Defendant removed the action to federal court on December 3, 2020, *see* Am. Notice of Removal, Dkt. 4;

WHEREAS on December 7, 2020, the Undersigned referred the case to Magistrate Judge Gorenstein for general pretrial management and for the preparation of reports and recommendations (“R&Rs”) on any dispositive motions, *see* Order, Dkt. 5;

WHEREAS the last action Plaintiff took in this case occurred on January 26, 2021, when he filed a letter that appeared to request a stay, *see* Letter, Dkt. 12;

WHEREAS to the extent Plaintiff was seeking a stay of this action, that request was denied by Magistrate Judge Gorenstein, *see* Order, Dkt. 13;

WHEREAS on September 29, 2021, Defendant moved for summary judgment on Plaintiff’s claims, *see* Mot. for Summ. J., Dkt. 19;

WHEREAS, pursuant to the Court’s scheduling order, Plaintiff was directed to respond to Defendant’s motion by October 20, 2021, *see* Order, Dkt. 17;

WHEREAS Plaintiff failed to respond to Defendant's motion by October 20, 2021;

WHEREAS on October 27, 2021, the Court ordered Plaintiff either to file his opposition to Defendant's motion by November 11, 2021, or to file a letter with the Court stating that he does not oppose the motion; the Court warned Plaintiff that failure to comply could result in dismissal of Plaintiff's case under Fed. R. Civ. P. 41(b) for failure to prosecute, *see* Order, Dkt. 25;

WHEREAS Plaintiff failed to oppose Defendant's motion or to file a letter with the Court by November 11, 2021;

WHEREAS on November 19, 2021, the Court ordered Plaintiff to show cause by December 9, 2021, why the case should not be dismissed for failure to prosecute under Rule 41(b); the Court again warned that failure to respond could result in dismissal of the case, *see* Order to Show Cause, Dkt. 26;

WHEREAS Plaintiff did not respond to the Court's Order by December 9, 2021;

WHEREAS on December 20, 2021, Magistrate Judge Gorenstein issued a R&R, recommending that this case be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute, *see* R&R, Dkt. 27 at 3;

WHEREAS in the R&R, Judge Gorenstein notified the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), they had fourteen days to file written objections to the R&R's findings, *see id.* at 4;

WHEREAS Judge Gorenstein further noted that failure to file objections would result in both the waiver of objections and the preclusion of appellate review, *see id.*;

WHEREAS no objections were filed by either party;

WHEREAS in reviewing an R&R, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge,” 28 U.S.C. § 636(b)(1)(C);

WHEREAS when, as here, no party objects to the R&R, the Court may accept the R&R provided that “there is no clear error on the face of the record,” *Heredia v. Doe*, 473 F. Supp. 2d 462, 463 (S.D.N.Y. 2007) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)); *see also* Fed. R. Civ. P. 72(b) advisory committee’s note;

WHEREAS an error is clear when the reviewing court is left with a “definite and firm conviction that a mistake has been committed,” *see Cosme v. Henderson*, 287 F.3d 152, 158 (2d Cir. 2002) (quoting *McAllister v. United States*, 348 U.S. 19, 20 (1954)); and

WHEREAS careful review of the R&R reveals that there is no clear error;


IT IS HEREBY ORDERED that the R&R is adopted in full; this action is DISMISSED with prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute.

Because the R&R gave the parties adequate warning, *see* R&R at 4, the failure to file any objections to the R&R precludes appellate review of this decision. *See Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). Because appellate review is precluded, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and, therefore, permission to proceed *in forma pauperis* for purposes of appeal is denied.

IT IS FURTHER ORDERED that the Clerk of Court is respectfully directed to close this case. The Clerk of Court is further directed to mail a copy of this Order to the *pro se* Plaintiff at Ronald G. Taylor, 420 West 19th Street, Apt. #3E, New York, NY 10011, and to note mailing on the docket.

SO ORDERED.

Date: January 12, 2022
New York, New York


VALERIE CAPRONI
United States District Judge